S.B. CIVIL WRIT PETITION NO.7949/2007

Mangi Lal.
vs.
Manju Devi and anr.

Date : 6.12.2007

HON'BLE MR. PRAKASH TATIA, J.

Ms.B Sipani for Mr.V Balia, for the petitioner.

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Heard learned counsel for the petitioner.

The petitioner's injunction application was allowed by the trial court vide order dated 9.10.2006 and the respondent was restrained from dispossessing the petitioner from the property in dispute. The appellate court allowed the appeal of the respondent vide order dated 9.10.2007 and dismissed the injunction application of the petitioner.

Learned counsel for the petitioner vehemently submitted that the trial court considered all the facts of the case and the plaintiff/petitioner is in possession of the suit property as owner of the property as the Will was executed in his favour on

23.10.1962. The electricity connection is also in the name of plaintiff's father. The petitioner also produced electricity connection bills of 2007. All those documentary evidence and facts were considered by the trial court and thereafter, the trial court granted injunction which has been reversed by the appellate court.

According to learned counsel for the petitioner, the first appellate court had no jurisdiction to interfere in the order passed by the trial court which is based on cogent evidence and was not perverse and capricious. It is also submitted that the petitioner's possession is settled possession and, therefore, he cannot be evicted and dispossessed by the respondent. It is also submitted that the appellate court virtually decided the suit itself by recording certain findings on the questions of facts which could have been recorded only after evidence and after trial. In this way, the appellate court's judgment is absolutely perverse and deserves to be set aside.

I considered the submissions of learned counsel for the petitioner and perused the reasons given by the courts below.

The first appellate court observed that the petitioner suppressed important material fact in the plaint thereby he has not come with clean hands. The first appellate court considered those relevant material facts in detail in the impugned order. Apart from above, the first appellate court also considered the electricity bills produced by the petitioner and its disconnection and restoration etc. The respondent purchased the property by registered sale deed dated 3.1.1957 and this fact was suppressed by the petitioner and further he suppressed the relationship between the parties which prima-facie goes against the petitioner.

Equitable relief cannot be claimed by suppressing important material facts and no relief can be granted in favour of the person who has not come with clean hands.

The contention of learned counsel for the petitioner that the petitioner can be dispossessed only by due process of law may be true but that does not mean that the Court should become a party to any act which the Court finds is not justifiable in the facts of the case otherwise, there will be no purpose of saying that the person who has not come with clean hands is not entitled

to relief but still he is entitled to relief on the ground that during pendency of the suit, status quo should be maintained.

I do not find any illegality in the impugned order and the findings recorded by the first appellate court are only prima-facie findings and not final findings as presumed by the learned counsel for the petitioner when the argument was advanced that the first appellate court virtually decided the suit.

In view of the above, this writ petition, having no merits, is hereby dismissed.

(PRAKASH TATIA), J.

S.Phophaliya